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PRESIDING OFFICER'S
RULING NO. R2001-1/40

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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING CONCERNING
DAVID B. POPKIN MOTION TO COMPEL RESPONSES TO
DBP/USPS-90, 123(b-d), 124-129, 130(a-c), AND 131-138

(Issued January 28, 2002)

This ruling considers a motion filed by limited participator David B. Popkin to compel the United States Postal Service to provide responses to seventeen interrogatories (or parts thereof) that he had directed to the Postal Service.¹ The interrogatories at issue are DBP/USPS-90, 123(b-d), 124-129, 130(a-c), and 131-138.² The Postal Service objected to providing responses to these interrogatories on January 7, 2002.³ The Postal Service responded to Popkin's Motion on January 17, 2002.⁴

DBP/USPS-90. This interrogatory is a follow-up question to a response to interrogatory OCA/USPS-65(d). The interrogatory is one in a series of interrogatories that inquire about Express Mail service at 20 specific facilities. Interrogatory DBP/USPS-90 states:

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-90/123[b-d]/124 Through 129/130[a-c]/131 Through 138, January 10, 2002 (Motion).

² Follow-Up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-85-103], December 17, 2001. Follow-Up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-122-138], December 26, 2001.

³ Objection of the United States Postal Service to David B. Popkin Interrogatory DBP/USPS-90, January 7, 2002. Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-123(B)-130(A-C), 131-137, and 138 (C-H)), January 7, 2002.

⁴ Response of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories (DBP/USPS-90, 123(B-D), 124-129, 130(A-C), 131-138), January 17, 2002.

Please refer to your response to DBP/USPS-65 subpart d. I will follow-up on this subpart even though the outstanding answer to DBP/USPS-84 may clarify the response due to the time limit for follow-up interrogatories. [a] There is no response to the service on some or all of the legal holidays. [b] Why are Chignik and Chignik Lagoon on the list since they have daily service? [c] Confirm, or explain if you are not able to do so, that King Cove is on the list because its daily service doesn't arrive until 5:20 PM, or after the Express Mail delivery time.

The Postal Service objects to the follow-up interrogatory as procedurally improper because it lacks ripeness. The Service notes that the determination of the discoverability of interrogatory DBP/USPS-84 is still pending.⁵ Popkin argues that once the ruling is made on DBP/USPS-84, the ruling should also apply to this interrogatory.

Ruling. A response to interrogatory DBP/USPS-84 essentially would be responsive to interrogatory DBP/USPS-90. However, the Postal Service objected to providing a response to interrogatory DBP/USPS-84. Popkin's subsequent motion to compel a response to interrogatory DBP/USPS-84 was denied, because the interrogatory was not a reasonable attempt at "clarification" and its relevance was "conjecture at best."⁶ No justification has been presented to consider interrogatory DBP/USPS-90 differently than interrogatory DBP/USPS-84. Therefore, the motion to compel a response to interrogatory DBP/USPS-90 is denied, as was the motion to compel a response to interrogatory DBP/USPS-84.

DBP/USPS-123(b-d), 124-129, 130(a-c) and 131-135. These interrogatories are follow-up questions to a response to interrogatory OCA/USPS-236(a). The response to OCA/USPS-236(a) provides reports prepared by the Vice Presidents, Area Operations, regarding verification that certified mail was delivered to state agencies.⁷

⁵ Follow-Up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-84], December 6, 2001.

⁶ Presiding Officer's Ruling on David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-84, January 18, 2002.

⁷ Response of United States Postal Service to Interrogatory of the Office of the Consumer Advocate (OCA/USPS-236), December 19, 2001.

The applicable parts of interrogatories DBP/USPS-123(b-d), 124-129, 130(a-c) and 131-135 state:

[] Regarding the processing of . . . , were all return receipts signed [this also includes an automated signing system] prior to the time that the control of the mail was transferred from the Postal Service to the addressee or at a later, more convenient time? [] If not signed prior to transfer of control, please provide all details and the method utilized. [] If an automated signing system was utilized, please provide details including a sample copy of the Form 3811.

The Postal Service's objection to responding to these interrogatories is based on the grounds of relevance, materiality, burden, and improper follow-up. The burden of providing a response is estimated to require upwards of 100 hours. The Service argues that nothing in the underlying interrogatory response raises new issues about Return Receipt to justify the filing of these interrogatories. Popkin argues that these interrogatories are proper follow-up, and are necessary to clarify and elaborate on the response to OCA/USPS-236.

Ruling. Providing responses to these follow-up interrogatories will add little to understanding or clarifying the response provided in the underlying interrogatory. The interrogatories appear to be yet another exploration into the history of Certified Mail and Return Receipt procedures at several specific facilities. Requiring the Postal Service to exhaust 100 hours of effort to investigate these questions is not justified given their limited bearing on the underlining interrogatory, and their usefulness in better understanding historic Certified Mail and Return Receipt procedures. Therefore, the motion to compel responses to interrogatories DBP/USPS-123(b-d), 124-129, 130(a-c) and 131-135 is denied.

DBP/USPS-136. This interrogatory is a follow-up question to a response to interrogatory OCA/USPS-236(d), which concerns certified mail processing. One paragraph of the 27-page response mentions that Priority Mail/Delivery Confirmation mailpieces for tax returns must be isolated and kept in the Priority mailstream. Interrogatory DBP/USPS-136 states:

Please refer to your response to OCA/USPS-236 subpart d attachment page 10. [a] Please describe the procedures that are utilized to ensure that all Priority Mail with Delivery Confirmation addressed to an IRS or state tax return center will be properly scanned at delivery. [b] Please advise the specific point of activity [from the processing plant to the ultimate transfer of control to the addressee] at which the scanning of delivery will take place.

The Postal Service objects to responding to this interrogatory because procedures applicable to one limited Delivery Confirmation recipient lack relevance and materiality to the issues in this proceeding. Furthermore, providing a response would be burdensome by taking tens of hours to respond. The Postal Service also asserts that the questions could have been asked before the deadline for institutional discovery.

Popkin alleges that the interrogatory is an appropriate effort to clarify and elaborate on the isolation of Priority Mail with Delivery Confirmation, and is relevant to the value of service. He asserts that the burden is worth the effort.

Ruling. Whether a question could have been asked in the initial round of discovery is too broad of a standard to apply in ruling on the appropriateness of follow-up interrogatories, and thus should not be the sole basis for denying a motion to compel. However, the follow-up interrogatory concerning Delivery Confirmation bears little relationship to the underlying interrogatory concerning Certified Mail. Furthermore, the follow-up interrogatory does not aid in clarifying or add to the understanding of the underlying interrogatory, and opens up a totally new line of questioning. The follow-up could be relevant to the value of service for Delivery Confirmation, but no attempt has been made to tie the procedures applicable to one specific customer to a more relevant system-wide concern. Therefore, the motion to compel a response to DBP/USPS-136 is denied.

DBP/USPS-137. This interrogatory is a follow-up question to a response to interrogatory OCA/USPS-236(d), which in part provided a chart from Andover concerning sampling of trays. Although the chart might be responsive to interrogatory

OCA/USPS-236(d), the relevance of this chart to an examination of Certified Mail is not self-evident. Interrogatory DBP/USPS-137 states:

Please refer to your response to OCA/USPS-236 subpart d attachment page 13. [a] Please provide copies of the instructions that were utilized to obtain the data for the entries in this report. [b] What is the significance of "finding" a tray containing certs? [c] Please explain how it is possible to have more "Trays Containing Certs" than "Trays Sampled". [d] Is data available for other dates besides April 11, 2001?

The Postal Service objects to providing a response to this interrogatory because detailed information about the chart is not relevant and material to any issues in this proceeding, including value of service, and a response would be burdensome to provide. Popkin alleges that the interrogatory is proper follow-up to clarify and elaborate on the information contained in the chart, and is relevant to the value of service.

Ruling. Providing a response to this interrogatory could aid in explaining and clarifying the chart. However, the relevance and materiality of the chart itself is questionable. Without a basis for understanding the relevance of the chart, its relationship to the value of service is only speculative. The information contained on the chart is scant, and applicable only to Andover. This further questions the relevance of this follow-up beyond mere curiosity. Therefore, the motion to compel a response to DBP/USPS-137 is denied.

DBP/USPS-138. Popkin's Motion requests that the Postal Service be compelled to respond to interrogatory DBP/USPS-138. The Postal Service had previously provided a response to subparts a and b.⁸ Therefore, Popkin's Motion will only be considered in respect to subparts c through h. These subparts are follow-up

⁸ Response of United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-123(A), 130(D), 138(A-B)), January 15, 2002.

questions to a response to interrogatory OCA/USPS-236(d), which in part provided a Certified Mail processing flowchart for Hartford. Subparts c through h are stated as follows:

[c] Please advise the number of copies of the Manifest that are prepared and the distribution of them after signing. [d] Does the manifest receive a manual signature of an employee or agent of the addressee? [e] Please advise the method that is utilized to "sign" the PS Form 3811's and if other than a manual signature, provide a sample copy. [f] Are the PS Form 3811 forms signed at the time of completion of the manifest? If not, when are they? [g] Please advise any evaluation that is made to ensure the proper completion of the PS Form 3811. [h] Please advise the date, relative to the date of delivery of the mail piece, that the PS Form 3811 will be returned to the mail stream for dispatch.

The Postal Service objects to responding to this interrogatory because the requested details are not relevant and material to the issues in this proceeding, and providing a response would be burdensome. It also asserts that the questions could have been asked before the deadline for institutional discovery, and the provision of the flowchart should not be allowed to open up general questions about Certified Mail procedures in Hartford.

Carlson alleges that the flow chart is related to the value of service and this interrogatory is an effort to clarify and elaborate on processing of Certified Mail and Return Receipts at Hartford. He reiterates that any interrogatory could have been asked before the deadline for institutional discovery, and the Postal Service has failed to specify the degree of burden in its objection.

Ruling. Whether a question could have been asked in the initial round of discovery is too broad of a standard to apply in ruling on the appropriateness of follow-up interrogatories, and thus should not be the sole basis for denying a motion to compel. Furthermore, the Postal Service has failed to specify its burden to provide a response, and the burden cannot easily be discerned from the pleadings.

However, providing a response to subparts c through h does not materially clarify or elaborate on any information presented in the flowchart. Instead, the subparts appear to form a new line of questioning related to Certified Mail processing at Hartford. Whether the response to these questions could be relevant and material to evaluating the value of service issues in this proceeding is speculative at best. Therefore, the motion to compel a response to DBP/USPS-138(c-h) is denied.

RULING

The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS 90/123[b-d]/124 Through 129/130[a-c]/131 Through 138, January 10, 2002, is denied.

A handwritten signature in black ink, appearing to read "George Omas". The signature is fluid and cursive, with a large initial "G" and "O".

George Omas
Presiding Officer